IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6139 OF 2007

Sahadeo Ramaji Gothal & Ors. .... Petitioners

Vs.

Gopal Sonu shigwan & Anr. .... Respondents

Mr. S.K. Mali for Petitioners.
Mr. C.J. Sawant, Senior Advocate with Mr. Nitin Dhumal for Respondent Nos. 1 and 2.

CORAM : A.P. DESHPANDE, J.
DATE : 17TH OCTOBER, 2007

P.C.

1) The present petitioners instituted a suit bearing R.C.S. No. 4 of 2004 and claimed injunction against the respondents not to interfere with the petitioners possession in relation to the suit property. A similar suit came to be filed by the respondents bearing R.C.S. No. 53 of 2004 in the same Court at Mangaon. In the suit filed by the respondents as well an application was filed at Exhibit 5 claiming temporary injunction. Both the applications at Exhibit 5 moved in the respective suits filed by the petitioners and the respondents, were taken up for consideration by the Trial Court. The Trial Court having found that the respondents have made out the prima facie case in regard to their title and possession to the suit property has

proceeded to reject the application moved by the petitioners and granted temporary injunction in favour of the respondents by allowing an application at Exhibit 5 filed in Civil Suit No. 53 of 2004.

2) Being aggrieved by the common order passed in both the suits, the petitioners filed Miscellaneous Civil Appeals before the District Court bearing No. 2 & 3 of 2005. The First Appellate Court while concurring with the view taken by the Trial Court has held that the present petitioners have not established their possession and whereas it is found by the First Appellate Court that the respondents herein have succeeded in establishing their possession. The Revenue entries show the possession of the respondents since the year 1977 i.e. from the date of the purchase of the property till the date of filing of the suit. Being of the view that the respondents have made out prima facie good case has held that the Trial Court was justified in granting temporary injunction and thus the Miscellaneous Civil Appeals came to be dismissed by common judgment and order passed by the Appellate Court which has been impugned in the present petition.

It is clear that temporary injunction is operating against the present petitioners since the year 2004 when the Trial Court granted an injunction. As the order is operating for the last three years in favour of the respondents, I deem it appropriate not to interfere with the same. At this stage ends of justice would be met by directing the Trial Court to decide the suit as expeditiously as possible.

3) In the result, Writ Petition is dismissed, as I do not find any illegality committed in the impugned order. I direct the Trial Court to decide both the suits as expeditiously as possible and preferably within a period of six months from today.

4) The learned counsel for the petitioners apprehend that the observations made in the impugned order may influence the trial Court while deciding the suit on merits. As the observations in the impugned order are prima facie in nature same would not weigh with the Trial Court while deciding the suit on merits. The apprehension is illfounded.

(A.P. DESHPANDE, J.)